

AGENDA

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Friday, May 4, 2018 - 10:00 a.m. - 3:00 p.m.

Ak-Chin Indian Community Court

- I. Registration (Beginning at 9:30 a.m.)**
- II. Call to Order and Greeting**
- III. New member and general introductions**
- IV. Approval of Minutes**
- V. Meeting Business**
 - A. Judicial Roundtable – Committee on Juvenile Court – ICWA Committee - Casey Foundation – October 18, 2018 – Judge Quigley**
 - B. AZ ICWA Guide – Professor Barbara Atwood**
 - C. Four Corners Cross-Jurisdictional Conference – Judge Burke**
 - 1. Goals for Conference**
 - 2. Timeframe for Conference**
 - 3. Planning Committee First Meeting Date**
 - D. Probation/Community Supervision Summit Planning – Susan Alameda**
 - E. Rule Petition on ICWA Representation of a Tribe – David Withey**
 - 1. Comment period expires May 21, 2018**
 - 2. Comment from Tribe**
 - 3. Position of State Bar Committees**
 - 4. Indian Law Section – Comment - Virjinya Torrez**

LUNCH

- F. Court Forum Priorities for AZ Judicial Department Strategic Plan – David Withey**
- G. Title IV-E Funding – DCS/Federal Agreement – Ken Poocha**
- H. 2018 AZ Judicial Conference Availability – David Withey**
- VI. Next Meeting: September 14, 2018 – Arizona Courts Building**
- VII Open Forum for Discussion of Issues of Concern**

IV. Approval of Minutes

ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM
Salt River Pima-Maricopa Indian Community Court
Draft Minutes of the January 26, 2018 Meeting

Court Forum Members Present:

Hon. Ryan Andrews Salt River Pima-Maricopa Indian Com. Court	Hon. Jan Morris Hualapai Tribal Court
Hon. Brian Burke Ak-Chin Indian Community Court	Hon. Kerry Passey Yavapai Nation Tribal Court
Hon. William Canby, Jr. U.S. Court of Appeals, Ninth Circuit	Hon. Douglas Rayes (telephonic) U.S. District Court
Hon. Victor Clyde Chinle Justice Court	Deanne Romo Clerk of Superior Court, Navajo County
Hon. Randall Howe Az. Court of Appeals, Division I	Kate Rosier (telephonic) Public Member
Hon. Lawrence King Colorado River Indian Community Court	Virjinya Torrez State Bar of Arizona
Hon. Delfred Leslie (telephonic) Hopi Tribal Court	Tasha Aikeas for Tracy Van Buskirk U.S. Attorney's Office
Maria Morlacci Arizona Office of the Attorney General	Hon. Wayne Yehling Superior Court, Pima County

Administrative Office of the Courts (AOC) Staff Present:

David Withey	Brenda Lee Dominguez
Susan Alameda (telephonic)	A.J. Gilman (Extern)

Participants/Visitors Present:

Chia Halpern Beetso	Kristine Firethunder (telephonic)	Allyson Thomas
Robert Clinton	OJ Flores	Edd Welsh
Thomas Cody	Paula LeBeau	Ida Wilber
Kimberly Dutcher	James Mapp	Sheina Yellowhair
Joel England	Dee Dee Samet	

I. Registration (Beginning at 9:30 a.m.)

II. Call to Order and Greeting

Judge Andrews called the meeting to order at 10:11 a.m.

Delbert Ray, Sr., President, welcomed the Court Forum.

David Withey thanked Judge Andrews for hosting the meeting and providing lunch.

III. Member and Participant Introductions

IV. Approval of Minutes

Virjinya Torrez requested a change on page 2, second paragraph under “IV. Approval of Minutes” and the first item on “Action Items” document. On both documents the sentence currently reads: Virjinya Torrez will be attending a seminar on Indian Law Section – Workers Compensation and will update the Court Forum at the next meeting. The sentence should be changed to read: Virjinya Torrez reported that the Indian Law Section may be putting on a Workers Compensation workshop and will update the Court Forum at the next meeting.

Motion: Judge King made a motion to approve the September 15, 2017 meeting minutes with the changes noted by Virjinya Torrez. Virjinya Torrez second the motion, which was unanimously approved.

V. Meeting Business

A. VAWA Implementation

1. Tribal Prosecution and Extradition of Non-Indians

David Withey reported that the VAWA Informational Conference is being held on April 3-4, 2018, at the Yavapai-Apache Nation, Cliff Castle Casino in Camp Verde, Arizona. For information regarding the conference contact iruben@yan-tribe.org or call 928-202-7071.

2. Tribal Orders of Protection and Warrants on NCIC (National Crime Information Center)

The U.S. Department of Justice launched the Tribal Access Program for National Crime Information (TAP) in August 2015 to provide tribes access to national crime information systems for both criminal and civil purposes. Arizona tribes currently participating in TAP are: (List seven tribes). Information on TAP can be found on the U.S. Department of Justice website: www.justice.gov/tribal/tap.

3. Extradition from State to Tribal Jurisdiction

Chief Prosecutor OJ Flores, Pascua Yaqui Prosecutor’s Office, provided a presentation on Extraditions.

Judge Andrews questioned who has jurisdiction when an individual has offenses with both the tribe and the state. Mr. Flores stated usually that

depends on which jurisdiction has the most serious offense giving it primary jurisdiction.

Judge Passey asked Mr. Flores how long has Pascua Yaqui court been entering warrants into NCIC. Mr. Flores reported that they have been entering warrants for approximately nine months.

Judge Passey asked what does the State do when they stop an individual and see the tribal warrant. Mr. Flores reported that this does cause confusion and is followed by a lot of calls. There is need for more law enforcement education in this matter, but relationships have been improving over the years and he has seen success with ongoing collaboration between tribal and state courts.

Judge Passey reported that the Maricopa County jails have cooperated with a one-day release of detainees to his court in order to address tribal criminal matters.

David posed the question of whether there are any issues with the state and federal courts that need to be addressed. **Action Item:** OJ Flores stated there is a need for education regarding Orders of Protection off the reservation in justice courts. There have been problems with individuals who work on the reservation and have a no contact order. Judges hesitate to comply with the order.

B. State Judicial Education Issues – Virjinya Torrez

Virjinya Torrez report on the following two issues: 1) a tribal officer acting as a state certified peace officer arrested a non-Indian and filed the matter in state court, the state court considered the tribe subject to state court jurisdiction, and then the state court ordered actions by the tribal law enforcement agency to which the tribe did not respond due to lack of jurisdiction, and 2) when a case goes to state court and a tribal officer has performed a search on tribal land pursuant to a tribal warrant, that the search is then being tossed out, because a warrant was not issued by a state court. Most of these cases involve marijuana offenses that will not be prosecuted in state court, but on tribal land the tribal courts follow the federal law where it is an illegal substance. She asked what can be done to address these issues.

David stated that the question is - who is the audience and are these isolated issues or state wide? They can possibly be addressed at different venues such as AOC training, conferences, and new judge orientations. **Action Item:** David to follow-up at the AOC regarding training opportunities.

Judge King stated these issues are state wide and he recommended speaking to AOC-Education Services Division, and that these issues be addressed at the new judge orientation.

C. Four Corners Cross-Jurisdictional Conference Follow-up

1. Goals for Conference

Judges Burke and King attended the Tribal State Judicial Consortium that was held in Albuquerque, New Mexico on October 13, 2017. Judge King reported that the meeting was well attended and that the Consortium has resolved their ICWA issues. Arizona and New Mexico are facing a different set of issues.

2. Timeframe for Conference

Action Item: Judge Burke will be contacting Judge William Johnson, Pueblo of Acoma Tribal Court, New Mexico Tribal-State Judicial Consortium - Tribal Co-chair, and provide a report at the April Court Forum meeting.

3. Planning Committee First Meeting Date

Judges Andrews, Burke, and King are planning to attend the upcoming National Council of Juvenile and Family Court Judges conference in Denver, Colorado at which they will discussed a conference with judges from the Four Corners states.

D. Involuntary Commitment Legislation Rule Change – Alida Montiel

Alida Montiel was unable to attend the meeting. David Withey provided an overview of the rule change. David stated that tribes should contact their local clerk of the court if there are any questions regarding filings.

Deane Romo, Clerk of Superior Court, Navajo County, reported that faxed and email copies are being accepted and that filing time is when the documents are received. **Action Item:** E-filing instructions are going to be discussed at the upcoming Clerk of the Court Association meeting on March 8, 2018.

LUNCH (12:00 p.m.)

E. Rule Petition on ICWA Representation of a Tribe – David Withey

1. Petition Filed January 10, 2018

David Withey reported that the Rule Petition is out for comment.

2. Concerns/Position of State Bar Committees/Section

Virjinya Torrez is a State Bar representative and volunteered to be of assistance if there is a need to address the Board of Governors. **Action Item:** Virjinya reported that there is an error on the Appendix A, under sections 4. and 5.B. Under 4. on line three the semi-colon should be removed after “§ 1903;” and under 5.B. the word “either” should be removed.

3. Comments from Tribes from other States

Judge King reported that both Michigan and Oregon have already changed their rules to facilitate representation of out of state tribal attorneys in state ICWA proceedings.

David reported that Turtle Talk posted information about the Rule Petition and is encouraging comments.

4. Committee Meeting

Judge Andrews stated that a committee is not needed.

F. Probation Supervision on Reservations

1. CRIT Meeting and Coordination Efforts – Judge King

Judge King provided an overview and the agenda of the CRIT meeting he organized on January 9, 2018. One need recognized is ongoing communication and coordination concerning tribal probationers and discharged prisoners re-entering Indian communities due to interstate or intercounty transfer or discharge from prison. He reported that there are interstate compact agreements between various states to allow individuals to serve their probation in another state, as long as certain conditions are met. David Withey noted the interstate compact involves rules that each state must follow. Susan Alameda recommended contacting Dori Littler, Administrative Office of the Courts (AOC) Adult Probation Services, who is the interstate compact trainer. Chuck Ryan, Department of Corrections, was recommended as another possible contact.

2. Probation/Community Supervision Summit Planning – Susan Alameda

Susan Alameda, Specialist and Drug Court Coordinator, AOC Adult Probation Services, announced the plans for a Western Arizona State-Federal-Tribal Community Supervision Summit. Susan reported that volunteers are needed for the Planning Committee, which is preparing for the next Summit. Individuals interested in volunteering to be a member of the Summit Planning Committee please contact Susan at salameda@courts.az.gov.

Susan reported that the Arizona Association of Drug Court Professionals (AADCP) in partnership with the ASU Center for Applied Behavioral Health Policy are having a conference April 18 – 20, 2018, at the Prescott Resort in Prescott, Arizona, entitled “2018 AADCP Problem Solving Courts Conference.” Register for the conference at the following link: <https://www.eiseverywhere.com/ereg/index.php?eventid=295602&>. There will be a limited number of scholarships offered to attend the conference.

Action Item: Susan Alameda to provide David Withey with the conference flyer, which will be provided to the Court Forum members.

COURT TOUR – Judge Andrews provided a tour of the Court complex

G. Workers Compensation in Tribal Jurisdictions – Dee Dee Samet

Dee Dee Samet, certified specialist in workers compensation, reported that there are individuals who are not getting representation and do not have ways to appeal their worker compensation matters in tribal jurisdictions. Ms. Samet reported that the Navajo Nation has a “Workers’ Compensation Act that is governed by 15 N.N.C. §§ 1001, et seq.

The Forum members agreed by consensus that this matter should be presented to the Inter Tribal Council of Arizona (ITAC) for their consideration. Judge Andrews recommended contacting Maria Dadgar, Executive Director, ITAC.

VI. Next Meeting: May 4, 2018 – Ak Chin Indian Community Court

VII Open Forum for Discussion of Issues of Concern

Judge Clyde asked how he could get a copy of the Tribal Justice documentary film that featured Judge Claudette White. **Action Item:** Judge King volunteered to provide a copy of the documentary to Judge Clyde.

David Withey reported that Judge Claudette White was sworn in as the San Manuel Tribal Court Chief Judge. Judge Andrews recommended sending a letter to Chief Judge White recognizing her service to the Court Forum. **Action Item:** David Withey to draft the letter.

Action Item: Judge Andrews stated that he would provide names for possible new tribal judge members. Virjinya Torrez to provide the name of the chief judge for the Pascua Yaqui Trial Court.

Judge King reported that the Annual Arizona Judicial Conference will be June 20 – 22, 2018.

Judge Andrews reported that the Casey Program will be holding a Tribal State Judicial Roundtable on October 18, 2018.

Action Item: Judge Ida Wilber requested that “Title IV Funding” be a topic for future discussion, specifically who is receiving the funding and what it covers.

VIII. Adjournment

Meeting adjourned at 3:16 p.m.

V. Meeting Business
A. Judicial Roundtable – Committee
on Juvenile Court – ICWA
Committee – Casey Foundation
– October 18, 2018

From: Withey, David

Sent: Wednesday, January 18, 2017 5:46 PM

To: Schrade, Jeff <JSchrade@courts.az.gov>; Goltz, Gabriel <GGoltz@courts.az.gov>; Lutt-Owens, Caroline <CLOwens@courts.az.gov>

Cc: Shelley, Robert <RShelley@courts.az.gov>; 'Sheri Freemont' <SFreemont@casey.org>

Subject: Judicial Roundtable Proposal for Judicial Conference Session

As we discussed, having considered options for holding the session proposed below adjacent to the judicial conference in the evening or before or after the conference it appears to me the best option is to propose a Juvenile Dependency Judicial Roundtable session as part of the conference. The Indian Child Welfare Act is one of many matters about which interaction between state and tribal judge such as that proposed would benefit the administration of justice in Arizona.

Program Description:

The National American Indian Court Judges Association (NAICJA) and the Casey Family Programs-Indian Child Welfare Program has selected Arizona as one of the priority states for Judicial Roundtables involving tribal and state juvenile court judges. The State, Tribal, and Federal Court Forum and its ICWA Committee are cooperating with Casey to plan and implement Judicial Roundtables with the goal of increasing participants' mutual understanding and commitment to improving outcomes for Indian children and their families' in dependency cases. To accomplish this, Casey is committed to fostering both informal and formal communication among state and tribal judges by providing a meal in conjunction with the program, national experts on child welfare, and an experienced facilitator. We request a session first thing in the morning that can be held following a breakfast provided for attendees.

Participating judges will exchange ideas regarding selected issues and best practices concerning Indian children who appear in their courts. Judicial Roundtables have functioned best when attended by tribal and state presiding juvenile court judges or their designees from each tribe and from each county with a significant number of Indian children in foster care to allow productive interaction and dialogue among judicial peers. We think a judicial conference session provides an ideal venue for participation from throughout the state.

With the adoption of new federal regulations and the proposal of new Arizona Rules of Procedure for the Juvenile Court implementing the Indian Child Welfare Act (ICWA), now more than ever, it is imperative for tribal and state juvenile court judges to come together to ensure the purposes of ICWA and the requirements of the new regulations are effectively implemented in Arizona's courts. The Judicial Roundtable is designed to inform and solidify a shared commitment to work together now and into the future towards to this end.

For more information contact
David Withey, Chief Counsel
at 602-452-3325

Arizona ICWA Roundtable
November 15, 2013
Improve Your Court and Action Items

Following is flip chart notes taken during the roundtable discussions:

Improve Your Court

1. Use other tribe foster families
2. Remove children issues from court
3. ICWA guide for local court
4. Work with local villages for welfare of children
5. Increase communication with problem solvers
6. Parent rehabilitation program
7. Communication with social workers
8. User friendly court
9. Return children to tribe with healing process
10. Attorneys for parents
11. CASA/GAL for parents
12. Picture of children in court file
13. Support court self determination

Action Items

1. Look at relative placement foster care criteria/standards
2. Collaboration on foster care – improve system
3. Create tribal ambassadors
4. Culturally based child welfare
5. Judges can promote change
6. Collect tribal specific data – Vicki Steinhoff, AZ DES
7. State court accessible – actual notice
8. Deep discussion about placement issues (and reunification)
9. Rules and funding mechanisms create structure through which the county/state and tribes interact
10. Communication between state and tribal judges
11. Actual notice early
12. Compact provides funding that follows child
13. Explore Minnesota model of money following child when jurisdiction is transferred to the tribe
14. Transfer rules that compliment tribal rules
15. Training GAL, P's attorney

V. Meeting Business

C. Four corners Cross-Jurisdictional Conference

New Mexico

Tribal-State Judicial Consortium



Founded: 2006

Forum Description:

Within New Mexico, there are currently 23 tribes/pueblos; 18 of which are federally recognized. The consortium has been very successful in its facilitation efforts between tribal and state courts and was recognized by the National Criminal Justice Association (NCJA) in August 2013 with the Outstanding Criminal Justice Program Award. The consortium had initially been a subcommittee of the New Mexico Court Improvement Project. In 1998, the consortium was informally recognized by the New Mexico Supreme Court as the New Mexico Tribal-State Judicial Consortium, as a result of the growing interest of New Mexico Supreme Court Justice Patricio Serna, and others, to form a more organized group in order to begin discussing cross-jurisdictional issues.

In 2006, the consortium was formally recognized as a Supreme Court advisory body in order:

“To encourage and facilitate communication and collaboration between State and Tribal Court judges on common issues, focusing on domestic violence, domestic relations, child custody, child support, child abuse and neglect, and juvenile justice, and addressing questions of jurisdiction and sovereignty as they relate to each particular issue.”

The consortium conducts in-person quarterly meetings, often at a state or tribal court location. Its committees meet by conference call monthly or bimonthly and meet more frequently as needed. The consortium is co-chaired by a state and tribal representative; the co-chairs have equal status and are appointed by the Supreme Court. These roles are quite flexible and the co-chairs are the driving force behind the consortium’s direction. For example, the consortium has provided travel scholarships for 6 – 16 tribal judges to participate in training events, and developed tribal-related workshops for these events to help educate a broader court audience.

The 2006 Supreme Court order set general requirements that the consortium shall:

- (1) Provide opportunities for state and tribal court judges to create rapport;
- (2) Educate state and tribal judges and tribal leadership; and
- (3) Continue to review the state system of services for Native children and families residing on and off the reservation.

These broad goals have allowed work to proceed on a wide variety of topics: full faith and credit, revamping the tribal-state website, tribal court orders for mental health services, and Sex Offender Registration and Notification Act (SORNA) implementation by the tribes. The consortium has facilitated the adoption of a uniform first page on domestic violence protection orders adopted by New Mexico Supreme Court and at least seven tribal courts. The consortium is particularly dedicated to child welfare and ICWA issues, creating bench cards on ICWA and distributing them to all state and tribal courts, child welfare agencies, and attorneys handling these cases. The consortium has supported the rights of incarcerated parents of Indian children, criminal courts, law enforcement, probation, state and tribal social workers, child welfare agency, and attorneys.

New Mexico Tribal-State Key Accomplishments
<ul style="list-style-type: none">✓ Formally recognized as a Supreme Court advisory body in 2006✓ Received Outstanding Criminal Justice Program Award from the National Criminal Justice Associate in 2013✓ Uniform first page for domestic violence protection orders✓ ICWA bench cards✓ Travel scholarships for 6-16 trial judges to participate in training events

Members:

The Consortium has 14 members, seven representing tribal courts and seven representing the state courts. There are also two alternative positions for tribal courts and one alternative for state courts and the representatives can fill in for regular members. The tribal court representatives are designated by tribal judges, with two from the Southern Pueblos, two from the Northern Pueblos, one from Jicarilla Apache Tribe, one from the Navajo Nation, and one general position. The state court representatives are appointed by the Supreme Court. There are also two liaison positions, one for a Supreme Court member and one for a Federal Court or attorney, who are also appointed by the Supreme Court. All members hold three year terms and may be reappointed.

Current Members**Chief Justice William Johnson**

Tribal Co-Chair
Isleta Appellate Court

Glynette R. Carson McNabb

Federal Liaison
Office of the U.S. Attorney

Chief Judge Michelle Brown-Yazzie

Zia Tribal Court

Judge M. Monica Zamora, State Co-Chair

NM Court of Appeals

Judge Randolph Collins

Acoma Pueblo Tribal Court

Judge John F. Davis

Thirteenth Judicial District Court

Chief Judge Vincent Knight, Sr.

San Ildefonso Tribal Court

Judge Sandra Engel

Bernalillo County Metropolitan Court

Judge Geoffrey Tager

Ohkay Owingeh Tribal Court

Judge Delilah Montaña-Baca

Sandoval County Magistrate Court

Judge Irene Toledo

Navajo Judicial Branch-Crownpoint District

Judge William E. Parnall

Second Judicial District Court

Judge Bruce C. Fox

Tribal Alternate
Pueblo of Laguna

Judge James Wechsler

New Mexico Court of Appeals

Judge Allan Toledo

Tribal Alternate
BIA-C.F.R. Court
Jemez Pueblo

Chief Justice Barbara J. Vigil

State Liaison
New Mexico Supreme Court

Funding Source:

The New Mexico legislature annually appropriates state general funds for the consortium's activities, with a budget of \$11,800 in the current year. In addition, the order that created a formal committee allows the tribal judges to be reimbursed by the consortium's budget for their mileage to attend the consortium's quarterly meetings, a move that has enhanced tribal participation at these events.

Website:

<https://tribalstate.nmcourts.gov/index.html>

Contact Information:

Felipita C. Jacks
New Mexico Administrative Office of the Courts
237 Don Gaspar, Room 25
Santa Fe, NM, 87501
E-mail Address: aocfcj@nmcourts.gov
Phone Number: 505-827-4808

New Mexico Authorizing Documents:

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 8500

*IN THE MATTER OF THE OF THE
TRIBAL-STATE JUDICIAL CONSORTIUM*

ORDER

WHEREAS, this matter came on for consideration by the Court upon recommendation of the Administrative Office of the Courts to formally recognize the Tribal-State Judicial Consortium as an advisory board of the Supreme Court of New Mexico, and the Court have considered said recommendation and being sufficiently advised, Chief Justice Richard C. Bosson, Justice Pamela B. Minzner, Justice Patricio M. Serna, Justice Petra Jimenez Maes, and Justice Edward L. Chavez concurring;

NOW, THEREFORE, IT IS ORDERED that the Tribal-State Judicial Consortium HEREBY IS FORMALLY RECOGNIZED as an advisory board to the Supreme Court of New Mexico;

IT IS FURTHER ORDERED that the Consortium shall continue to build relationships and foster communication between state courts and tribal courts through the development of basic information about each court, its laws, customs and values;

IT IS FURTHER ORDERED that the Consortium shall be composed of fourteen (14) members appointed by the Supreme Court, provided that half of the Consortium members shall be New Mexico and Colorado Indian Court Judges Association representatives designated by the Association from time to time;

IT IS FURTHER ORDERED that the Consortium shall have two co-chairs, one designated by the Supreme Court and one designated by the New Mexico and Colorado Indian Court Judges Association;

IT IS FURTHER ORDERED that the Court may appoint up to three alternate members, two of which may be designated by the New Mexico and Colorado Indian Judges Association; and

IT IS FURTHER ORDERED that the Court may designate a Justice to serve as liaison.

IT IS SO ORDERED.

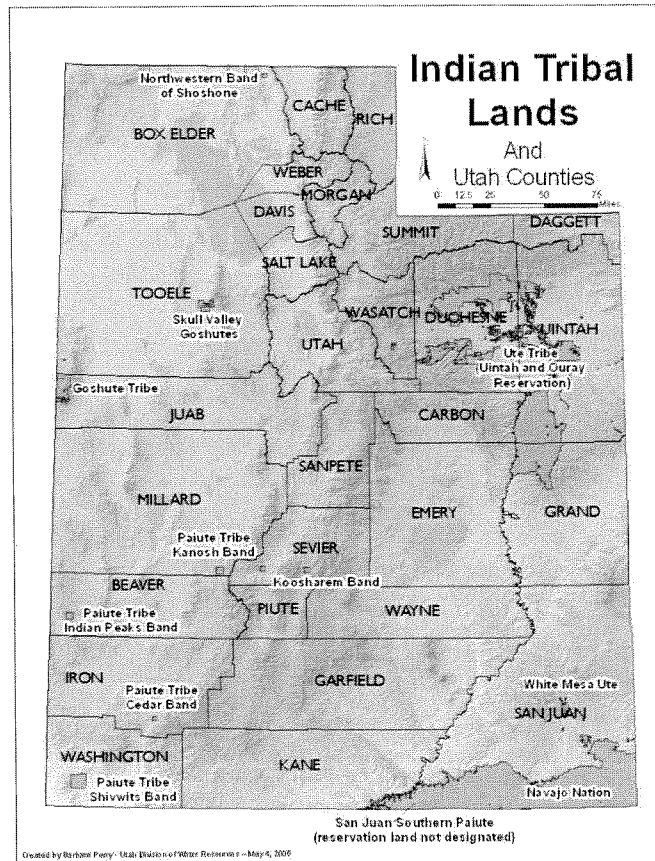
Utah

Tribal-State Court Forum

Founded: 2011

Forum Description:

There are seven federally recognized tribes in Utah. The forum was created as a subcommittee of Utah's Court Improvement Program, with a particular focus on the welfare of Indian children. The Court Improvement Program is federally funded to support improvement efforts in child welfare cases. The originating chair was the Honorable William Thorne with the Utah Court of Appeals. Upon his retirement the committee is now chaired by the Court Improvement Program Coordinator and the Chief of Staff for the Ute Tribe.



The forum meets quarterly and focuses their efforts on several issues, including:

- Indian Child Welfare Act (1978),
- State/tribe collaboration, and
- Foster care recruitment.

The forum has been quite successful and facilitated a statewide ICWA assessment and ICWA training for all state court judges and child welfare attorneys. The forum has also committed to continuing an annual Indian Child Welfare Conference; three have already been held. The forum is especially concerned about appropriate placement of Indian children and has spearheaded a very successful recruitment of Native American foster homes.

Utah Tribal-State Key Accomplishments	
✓	Statewide ICWA assessment
✓	ICWA training for all state court judges and child welfare attorneys
✓	Annual Indian Child Welfare Conference
✓	Successful recruitment of Native American foster homes

Members:

Director, Division of Child and Family Services

Native American Foster Care Recruitment Specialist

Title VII Coordinator

Ute Tribe Juvenile Judge

Director, Parent Defense Alliance

Indian Issues Coordinator, Department of Human Services

Indian Child Welfare Act Specialist

Director, Office of the Guardian ad Litem

Director, Ute Social Services

State Court Juvenile Court Judge

Child Welfare Program Specialist, Administration for Children and Families, Region VIII, U.S. Department of Health and Human Services

Court Improvement Program Coordinator

Assistant Program Director, Juvenile Justices Services

Utah Foster Care Foundation

Casey Family Programs

Judge, Goshute Tribe

Chief of Staff, Ute Tribe

Director, Division of Indian Affairs

Director, Paiute Indian Tribe of Utah Social Service

Funding Source:

Funded through Utah's Court Improvement Program

Website: None

Contact Information:

Misty Butler

Administrative Office of the Courts

450 South State Street

Salt Lake City, UT, 84114

E-mail Address: mistyb@utcourts.gov

Phone Number: 801-578-3939

V. Meeting Business

E. Rule Petition on ICWA Representation of a Tribe

Brandelle Whitworth
New Member
Posts:1

14 Feb 2018 10:45 AM

Brandelle Whitworth, Bar No. 6017
General Counsel, Shoshone-Bannock Tribes
PO Box 306
Fort Hall, ID, 83203-0306
(208) 478-3923
bwhitworth@sbtribes.com

To the Honorable Arizona Supreme Court,

I fully support and encourage the implementation of the proposed changes to Rules 38 and 39 in Arizona, which are intended to waive certain requirements for out of state attorneys who seek to engage in the limited practice of law in Arizona to represent an Indian tribe in an Indian Child Welfare Act proceeding.

I have been employed as an in-house attorney with my tribe, the Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, for nearly 18 years and during that time have appeared in Indian Child Welfare Act cases in approximately 17 different states, including Arizona.

I can attest that bar licensure, pro hac vice fees, and/or the hiring of local counsel can be very cost prohibitive and often act as a bar to full participation of the very Indian tribes who's rights were meant, in addition to the rights of the affected Indian children, to be protected by the Indian Child Welfare Act. To that end, I encourage your approval and implementation of the proposed amendments of Rules 38 and 39 to better enable Indian tribes' participation in these types of cases in the great State of Arizona.

Sincerely,
Brandelle Whitworth
General Counsel
Shoshone-Bannock Tribes

V. Meeting Business
**F. Court Forum Priorities for AZ Judicial
Department Strategic Plan**

Potential Strategic Agenda Initiatives/Projects

We have launched numerous programs during the past four years including bail reform, Fair Justice, fines and fees reform, rule restyling, civil justice reform, etc. Many of these efforts now need time to mature and would likely continue to the next agenda, such as:

- ❖ Continuing to implement Civil Justice Reform
- ❖ Applying civil justice reform principles to other case types
- ❖ Continuing to work of the Fair Justice Initiative
- ❖ Continuing to focus on Access to Justice

However, there are also new initiatives on the horizon that are likely to come to fruition during the next few years, such as:

❖ DETENTION

- Code/statute/rule changes need to allow juvenile detention centers to be repurposed for additional uses including treatment centers, shelter type programs, schools for juveniles expelled, etc.

❖ TELEMEDICINE/COUNSELING

- Pilot and, if successful, deploy these tools to expand counseling to rural AZ and the ability to provide medically assisted treatment for opioid and heroin cases.

❖ JUVENILE SEX OFFENDERS

- Complete review of protocols and, as needed, modify the approach currently used to treat juvenile sex offenders.

❖ DV

- Build new treatment models for DV offenders based on the best research available and data from the recently adopted lethality assessment instrument.

❖ ODR

- We are launching pilot programs utilizing ODR technology to allow citizens to resolve court cases without physically coming to court. Family post adjudication and traffic cases are initial targets.

❖ TECHNOLOGY

❖ COURT REPORTER SHORTAGE

- How will courts capture the court record with a growing shortage of court reporters?

❖ JUVENILE RULES

- Restyling and update.

❖ CASE TIME STANDARDS/CASEFLOW MANAGEMENT

❖ REVIEW LEGAL DOCUMENT PREPARERS PROGRAM

- To determine if enhancements can provide additional access to court services.

Court Forum Issues

Community supervision summits – probation & prison reentry

Four corners court forums conference

Tribal-State judicial roundtable on meeting the needs of Indian children

Overcoming Bias



Customary Adoption
Resource Links.pdf



Guardianship
Assistance Program.

Orders of protection enforcement

Extradition to and from reservations

Tribal law enforcement officer exercise of state peace officer authority



Judicial Response
to Impaired Driving

Tribal Involuntary Commitment process guide and CBT

Specialty (wellness, veterans, drug) court cross-jurisdictional cooperation

Cross jurisdictional access to conviction/order information (sex, DUI, DV offenses)

Service of process on reservations

Child support enforcement

ICWA regulations implementation – revised ICWA Guide

State judge education

Tribal judge education

Juvenile detention alternatives

Access to justice – court web sites and forms for litigants

Federal tribal coordination – criminal prosecution & probation supervision



Capacity Building
CENTER FOR TRIBES

Menu

Understanding Bias

Welcome

Understanding Ourselves

Our/Domestic Violence

Our Field Experience

Our Values

Our History

Reflection

Exposing Hidden Biases

The Impact of Unchecked Biases

More about Bias

Common Ways Bias is Expressed

The Realities of Decision Making

Making Unbiased Decisions

Making an Informed Decision

How to Overcome Bias

Conclusion

ABOUT THIS SERIES

Every assessment with a family can change the course of someone's life. It is important to be self-aware, intentional about engaging with families, and to use the information to make decisions.



In our deliberation, we must consider the impact of our decision on the next seven generations.

— Great Law of the Six Nations Iroquois Confederacy of Native Americans

Family Assessment: Understanding Bias

NEXT >



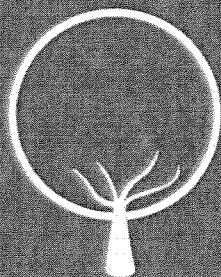
Capacity Building
CENTER FOR TRIBES

FAMILY ASSESSMENT TOOL HOW TO OVERCOME BIAS

FEBRUARY 2018

ABOUT THIS SERIES

Every assessment you do can change the course of someone's life. It is important to be self-aware, intentional about engaging with families, and to use the information you collect to make decisions.



SLOW DOWN

The first step is to give ourselves time to slow down, be deliberate, present, and logical. Slowing down helps us carefully process, rather than automatically making judgments based on past experiences. Taking a moment before we work with families can be helpful to remind ourselves to be fully present.

CREATE AN OPEN MIND

We often process information by comparing current events, ideas, and people against past experiences. We need to consciously work to separate our memories of past experiences from what is happening in the present.

RECOGNIZE DIFFERENCES

We're all aware of differences in age, gender, race, socio-economic status, sexual orientation, religion, etc, and how those characteristics may influence people's beliefs and behaviors. We all have a tendency to be most comfortable with people like us. This reinforces unconscious bias. As practitioners, we need to be able to work with people who are different from us without allowing our biases to interfere.

ACKNOWLEDGE OUR OWN BIAS

Awareness of preconceptions allows us to correct or compensate for them. Adjusting for bias can take place when we have awareness and understand the importance of addressing our own biases in order to work effectively with families.





Capacity Building
CENTER FOR TRIBES

FAMILY ASSESSMENT TOOL HOW TO OVERCOME BIAS

FEBRUARY 2018

REVIEW OUR INTERNAL CONVERSATION

Are we basing our decisions on quick judgments or first impressions? Are we basing our decisions on facts? It is important to stop and think about the impact any bias may have on our work with families.

LOOK AT OUR OWN BEHAVIOR

By looking at our own behavior, we may uncover established patterns of thinking and decision making. If we find that we have a tendency to make quick judgments about people, we have the opportunity to change.

CHANGE OUR LENS

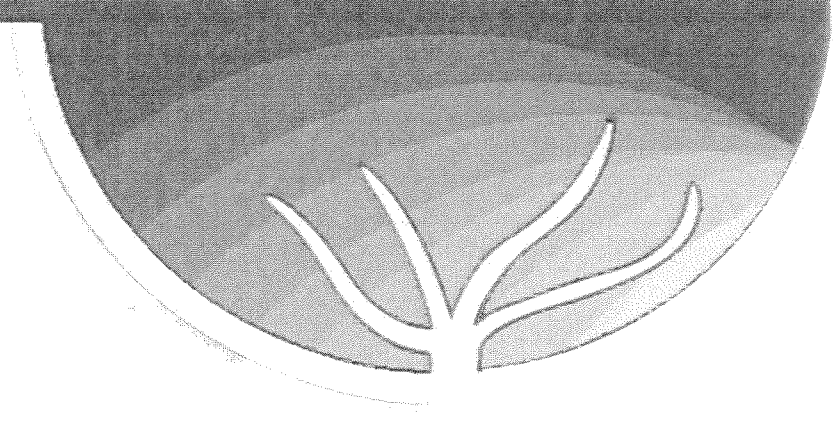
Practice unbiased thinking by acknowledging that anyone may fall into patterns of bias and recognizing our unconscious actions. Finding solutions to biased thinking may take experimentation and refinement.

REFRESH OURSELVES

When we are tired, hungry, working too hard, or feeling stressed out, biases are more likely to emerge. Be intentional in using vacation and sick days; by practicing self-care, we can lessen the likelihood of reverting to biased thinking.

ASK FOR SUPPORT

Sometimes, as practitioners, we might feel overwhelmed, and we may need to seek the support of others, either informally, with colleagues and mentors, or formally, with support professionals. It's healthy to recognize that we all need support.



ABOUT "TOOLS FOR GROWTH" RESOURCES. The Capacity Building Center for Tribes' Tools for Growth resources are developed by a team of American Indian/Alaska Native/Indigenous child welfare professionals from across Indian Country who are dedicated to providing tribal communities with the tools they need to thrive and build their capacity to strengthen children, youth, families, and communities. The group works together to both establish a common vision of the resources needed and create content.

Phone: 1-800-871-8702 Email: info@cbc4tribes.org Web: tribalinformationexchange.org



Customary Adoption

Targeted Resources for Tribal Child Welfare, January 2016

In Indian Country, customary adoption is a traditional alternative to standard adoption practice and a more appropriate permanency placement for Native Children. Customary adoption allows children to be adopted without requiring a termination of parental rights. This practice exercises tribal sovereignty and helps to maintain family connections.

Customary Adoption at White Earth Nation

This article by Anita Fineday (pg. 28-29) touches upon her experience as chief judge at the White Earth tribal court. She shares her knowledge of writing child welfare code that encompassed messages from their tribal elders, and their work creating something called a "suspension of parental rights" and customary adoption guidelines and contracts.

[Find the White Earth Band of Ojibwe Customary Adoption Code here.](#)

Customary Adoption Resources from Tribal STAR

Tribal STAR is a training and technical program at the Academy for Professional Excellence, San Diego State University that focuses on building collaborations that improve outcomes for American Indian/Alaska Native children in child welfare. They share specific resources from the Soboba Band of Luiseño Indians:

[Fact Sheet for County Social Workers](#)
[Fact Sheet for Tribal Social Workers](#)
[Customary Adoption Talking Points & FAQs](#)
[Sample Customary Adoption Order \(ver. 1\)](#)
[Sample Customary Adoption Order \(ver. 2\)](#)

Learn More:

[Customary Adoption Overview & Resources from NICWA](#)
[Child Welfare Information Gateway: Working with American Indian Children and Families in Adoption](#)
[California Indian Legal Services](#)

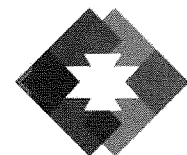
Customary Adoption in California

In 2010 California established a new permanency option for native children who are dependents of CA Courts: Customary Adoption. The enacting law requires county child welfare workers to consult with the child's tribe about the possibility of customary adoption as a permanency option in every case involving a native child.

The Soboba Band of Luiseño Indians sponsors a [California Tribal Customary Adoption Website](#) to provide general information and technical support on Tribal Customary Adoption to tribal leaders, tribal and state court judges, tribal and state court attorneys, and tribal and state child welfare workers.

A [webpage on the CA Courts system](#) includes the legislation, requirements summary, court rules and forms, contact information, links to other resources, and a brief document responding to [FAQs](#).

[In this report](#), the Family and Juvenile Law Advisory Committee provided official recommendations to the California Judicial Council on how to amend rules and revise forms related to the legislation enacting Tribal Customary Adoptions in California.



Capacity Building
CENTER FOR TRIBES

Title IV-E Guardianship Assistance

Published: July 26, 2013

Categories: Funding

Topics: Title IV-E

Tags: , Guardianship Assistance Program

Program Description

The title IV-E Guardianship Assistance Program (GAP) is a formula grant that helps States, Indian Tribes, Tribal Organizations and Tribal Consortia (hereafter "Tribes") who opt to provide guardianship assistance payments for the care of children by relatives who have assumed legal guardianship of eligible children for whom they previously cared as foster parents. Unlike title IV-E Foster Care and Adoption Assistance, the title IV-E Guardianship Assistance Program is an optional program for title IV-E agencies. The program is authorized by title IV-E of the Social Security Act, and funding is contingent upon an approved title IV-E plan to administer or supervise the administration of the program.

For those States and Tribes that opt to participate in the program, federal assistance may be used only to support the care of children discharged from foster care to legal guardianship who meet the eligibility requirements specified in the statute. Funds may also be used to support siblings of eligible children in certain situations as specified in the statute.

In general, beneficiaries are children who have been eligible for title IV-E Foster Care maintenance payments during at least a six consecutive month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as meeting the licensure requirements as a foster family home. In addition, the State or Tribal agency must determine 1) that return home or adoption are not appropriate permanency options for the child; 2) the child demonstrates a strong attachment to the prospective relative guardian; 3) the relative guardian has a strong commitment to caring permanently for the child; and 4) for children who have attained the age of 14, the child has been consulted regarding the kinship guardianship arrangement. Beneficiaries may also be siblings of eligible children placed in the same kinship guardianship arrangement. Federal assistance is available to States and Tribes for payments made to a relative guardian in accordance with a kinship guardianship agreement that is in writing, negotiated and is binding.

The fifty (50) States, the District of Columbia, Puerto Rico and Tribes with approved title IV-E plans are eligible to participate in the Guardianship Assistance Program awards.

Program Highlights

As of August 2017, 43 Title IV-E Agencies have submitted Title IV-E plan amendments to enable them to make claims for federal support of eligible guardianship assistance.

- 35 States and the District of Columbia have been given final approval of those GAP amendments (Alabama, Alaska, Arkansas, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Vermont, and Washington, West Virginia and Wisconsin).
- 8 Tribes or Tribal Consortium have been given final approval of the GAP amendment (Confederated Salish and Kootenai Tribe, Eastern Band of Cherokee Indians, the Keweenaw Bay Indian Community, Navajo Nation, Pascua Yaqui Tribe, Port Gamble S'Klallam Tribe, the South Puget Intertribal Planning Agency, and Tolowa Dee-ni' Nation of Smith River, California (formerly Smith River Rancheria).

Additional Resources:

Child Welfare Policy Manual (<https://www.acf.hhs.gov/cwpm>) – includes questions and answers regarding the Guardianship Assistance Program.

Program Instructions 10-01 (<http://www.acf.hhs.gov/cb/resource/pi1001>): This Program Instruction (PI) provides instruction on the Title IV-E Plan Amendment – Guardianship Assistance Program; Title IV-E Guardianship Demonstration Projects; Fostering Connections to Success and Increasing Adoptions Act of 2008.

Program Instructions 10-11 (<http://www.acf.hhs.gov/cb/resource/pi1011>): This Program Instruction (PI) provides instruction on the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351).

**LAW ENFORCEMENT AGREEMENT BETWEEN
THE NAVAJO NATION AND
THE ARIZONA DEPARTMENT OF PUBLIC SAFETY**

Section I Parties

This law enforcement agreement (hereinafter "AGREEMENT") is entered into by and between the Navajo Division of Public Safety, Navajo Police Department (hereinafter "NATION") and the Arizona Department of Public Safety (hereinafter "AZ DPS"). The Navajo Nation and State of Arizona may also be referenced as Parties or Agencies.

Section II Purpose

This AGREEMENT is entered into to provide for the orderly and effective enforcement of the criminal and traffic laws of the Navajo Nation and the State of Arizona within Navajo Indian Country, as defined in 18 U.S.C. § 1151; to prevent any jurisdiction from becoming a sanctuary for violators of the law of another jurisdiction; to prevent inter-jurisdictional flight; and to foster greater respect for the laws of each jurisdiction by the more certain application thereof. This AGREEMENT is based on mutual respect for and recognition of the inherent sovereignty of the Navajo Nation and the State of Arizona and the laws enacted by each sovereign.

Section III Authorities

The NATION is duly authorized to enter into this AGREEMENT pursuant to 17 N.N.C. § 102 and 2 N.N.C. § 1353, as amended. AZ DPS is authorized to enter into this AGREEMENT pursuant to A.R.S. § 11-951, *et seq.*, and A.R.S. § 13-3872.

Section IV Creation of Third Party Rights or Benefits; Use of Agreement as Evidence

This AGREEMENT does not create any substantive or procedural right or benefit, civil or criminal, in favor of any person or entity not a party hereto; nor does it create a duty to respond not otherwise imposed by applicable law. No part of this AGREEMENT may be used as evidence in any court proceeding by any party hereto or any successor, assignee, or subrogee of any party hereto unless the entire AGREEMENT is also received into evidence. Failure to follow the provisions of the AGREEMENT shall not, of itself, constitute a defense, ground for suppression of evidence, or basis for dismissal of any criminal action.

Section V Territorial Application

The geographical area covered by this AGREEMENT is co-extensive with the boundaries of the Arizona portion of the Navajo Nation and the State of Arizona, provided nothing herein shall limit the application of the laws of fresh pursuit to any action undertaken pursuant to this AGREEMENT and each Party acting under the authority of this AGREEMENT may engage in fresh pursuit as allowed by law.

Section VI Scope of Powers

- A. Pursuant to this AGREEMENT, the NATION hereby grants AZ DPS officers those powers necessary to enforce the criminal and traffic laws of the Navajo Nation, including the powers to conduct searches or make arrests for any violations thereof to the full

extent as allowed by applicable law, hereinafter referred to as "mutual aid law enforcement certification."

- B. The Parties to this AGREEMENT recognize and acknowledge that NATION officers are certified through Arizona Peace Officer Standards and Training, and thereby independently "possess and exercise all law enforcement powers of peace officers" in the State of Arizona, *see* A.R.S. §13-3874. Nothing in this AGREEMENT diminishes such authority.

Section VII Application for Certification

- A. The Director of AZ DPS, or his or her designee, shall complete and submit the NATION's Peace Officer Commission Card form (Exhibit 1) for each AZ DPS officer who is qualified for a mutual aid law enforcement certification. An AZ DPS officer is qualified if he or she completes the required training pursuant to Subsection B, satisfactorily meets all requirements on the Peace Officer Commission Card form, and the Director of DPS, or his or her designee, submits a statement of qualifications that includes certification of a satisfactory background check conducted within the last five years of the date of the application and copies of a currently valid State of Arizona driver's license and a valid Arizona Department of Public Safety law enforcement certification card for each applicant.
- B. AZ DPS officers shall complete a 16-hour training course at the NATION's police academy, or at such other location agreed upon by the Parties, prior to receiving a mutual aid law enforcement certification by the NATION.
- C. The NATION shall, without undue delay, certify each applicant upon determining that the applicant is qualified for mutual aid law enforcement certification. No applicant shall be denied a mutual aid law enforcement certification on the basis of race, creed, sex, or color.
- D. An AZ DPS officer shall remain commissioned under this AGREEMENT unless and until he or she resigns his or her employment as an AZ DPS officer. AZ DPS shall timely notify the NATION of such resignation, and AZ DPS shall return the AZ DPS officer's Navajo mutual law enforcement certification card within ten (10) calendar days of the date of resignation to the official and address shown in Section XXI.
- E. AZ DPS agrees to timely notify the NATION if an AZ DPS officer who holds a Navajo mutual aid law enforcement certification under this AGREEMENT is being considered for termination from AZ DPS employment or has been charged with or convicted of a felony or misdemeanor.
- F. The NATION may, at any time, suspend or revoke any mutual aid law enforcement certification issued pursuant to this AGREEMENT for reasons solely within the NATION's discretion. The NATION shall notify, in writing, the official and address shown in Section XXI of the suspension or revocation of any certified AZ DPS officer. AZ DPS shall return the officer's Navajo mutual law enforcement certification card

within ten (10) calendar days of the date of the suspension or revocation to the official and address shown in Section XXI.

Section VIII Arrest and Custody Procedures

- A. Indian suspects arrested within the NATION's territorial jurisdiction by any certified AZ DPS officer pursuant to this AGREEMENT shall be immediately taken to the appropriate and nearest NATION detention facility for booking except if the appropriate and nearest NATION detention facility is Shiprock, New Mexico. In this case, an AZ DPS officer shall transfer the Indian suspect to a NATION officer who will transport the suspect to the Shiprock detention facility for booking.
- B. Non-Indian suspects arrested by NATION officers pursuant to this AGREEMENT shall be taken to the appropriate County detention facility for booking in the County in which the arrest occurs.
- C. A NATION officer who arrests any non-Indian shall inform the arrestee of his or her rights as required by federal law.
- D. A certified AZ DPS officer who arrests any Indian within the NATION's territorial jurisdiction under any provision of the NATION's criminal laws shall inform the arrestee of his or her rights relating to criminal law under the Navajo Bill of Rights.
- E. A certified AZ DPS officer who, if authorized by the Bureau of Indian Affairs ("BIA") to enforce federal law, arrests any Indian within the NATION's territorial jurisdiction for any offense under 18 U.S.C. § 1152 or 1153, or any other applicable federal criminal law, shall inform the arrestee of his or her rights as required by federal law. If the AZ DPS officer is not federally commissioned by the BIA, he or she shall hold the suspect until a federally commissioned NATION officer or other federally commissioned officer may inform the suspect of his or her rights as required by federal law.
- F. In the event an arrest is made, or could be made, under 18 U.S.C. § 1152 or 1153 or for any federal felony within the NATION's territorial jurisdiction:
 - 1. by a federally commissioned NATION officer, that officer shall immediately notify a NATION Criminal Investigator or FBI Agent who will then proceed with the case; or
 - 2. by an AZ DPS officer only if federally commissioned, he or she shall immediately notify a NATION Criminal Investigator or FBI Agent who will then proceed with the case.
- G. A certified AZ DPS officer who arrests any Indian within the NATION's territorial jurisdiction shall notify the NATION's police dispatcher, via police radio, of the arrest, obtain a report number, prepare and submit a complete and accurate NATION arrest/booking report, submit the arrest report to the proper NATION police district immediately for processing, forward said information and documents to the proper NATION Prosecutor's Office, and shall honor any Navajo district court subpoena and summons relating to the arrest.

- H. A NATION officer who arrests a non-Indian pursuant to this AGREEMENT shall notify the nearest sheriff's dispatcher, via police radio, of the arrest, obtain a report number, prepare and submit a complete and accurate sheriff's arrest/booking report, submit the arrest report to the nearest sheriff's facility immediately for processing, forward said information and documents to that county's district attorney, and shall honor any county or magistrate court subpoena and summons relating to the arrest.

Section IX Investigations

All investigations, including searches and seizures, conducted within the applicable territory of this AGREEMENT shall be conducted pursuant to applicable Navajo, Arizona and/or federal law.

Section X Forfeitures

If, as a result of any investigation within the NATION's territorial jurisdiction in which the NATION and AZ DPS participate together and any tangible items of contraband, including money, are seized from an Indian or non-Indian pursuant to the criminal laws of the Navajo Nation or the State of Arizona, the NATION and AZ DPS shall share in the distribution of any and all items not otherwise legally destroyed or money forfeited as a result of said investigation. Shares and proceeds from the sale of any and all items, including money, will be distributed based on applicable law and the relative contributions of the participating Agencies. Relative contributions will be cooperatively evaluated and determined by participating Agency heads or their authorized delegates.

Section XI Crime Statistics

The Parties agree that crime statistics arising from arrests and investigations conducted pursuant to this AGREEMENT shall be accounted for and maintained by the Agency in whose jurisdiction the offense was committed.

Section XII Extradition

Any Indian located within the NATION's territorial jurisdiction who has violated Arizona criminal law and who seeks asylum from prosecution by the State of Arizona shall be extradited pursuant to 17 N.N.C. §§ 1951 *et seq.*, as may be amended, except if the arrest is as a result of fresh pursuit pursuant to Section V of this AGREEMENT.

Section XIII Citations for Traffic Offenses

- A. A certified AZ DPS officer who effects a stop for a traffic offense within the NATION's territorial jurisdiction on any Indian may issue a written warning or issue a citation into the appropriate Navajo district court or effect an arrest where permitted by Navajo law.
- B. A NATION officer who effects a stop for a traffic offense within the State of Arizona but outside the NATION's territorial jurisdiction on any non-Indian may issue a verbal or written warning or issue a State of Arizona traffic citation or effect an arrest where permitted by Arizona law.

Section XIV Supervision and Control of NATION Officers and AZ DPS Officers

NATION officers remain under the ultimate supervision and control of the NATION, but shall take direction from the ranking AZ DPS officer when NATION officers are exercising authority granted pursuant to this AGREEMENT in assistance of AZ DPS officers outside the NATION's territorial jurisdiction. Certified AZ DPS officers shall remain under the ultimate supervision and control of AZ DPS, but shall take direction from the ranking NATION officer when exercising authority granted pursuant to this AGREEMENT in assistance of NATION officers.

Section XV Compensation and Benefits of NATION Officers and AZ DPS Officers

All NATION officers remain employees of the NATION. The NATION shall remain liable for NATION officers' salaries, workers' compensation, and civil liabilities. Each NATION officer shall be deemed to be performing regular duties for the NATION while performing public safety services pursuant to this AGREEMENT. All certified AZ DPS officers remain employees of the State of Arizona. The State of Arizona shall remain liable for all AZ DPS officers' salaries, workers' compensation, and civil liabilities. Each certified AZ DPS officer shall be deemed to be performing regular duties for the State of Arizona while performing public safety services pursuant to this AGREEMENT.

Section XVI Dispute Resolution

In the event of a dispute, claim or controversy ("dispute") arising out of or related to this AGREEMENT, the Parties agree to meet as promptly as possible to informally resolve the dispute in good faith. In the event the Parties are unable to reach informal resolution, either Party, or both, may notify the other in writing of intent to terminate the AGREEMENT in accordance with Section XVIII of this AGREEMENT.

Section XVII Indemnification

The NATION shall be liable for all acts or failure to act of its Officers acting within the scope of the NATION's employment. The State of Arizona shall be liable for any and all acts or failure to act of certified AZ DPS officers acting within the scope of the State of Arizona's employment.

Section XVIII Duration, Modification and Termination of Agreement

This AGREEMENT is in effect for a period of five (5) years from the date of signing unless modified or terminated as described below. Renewals of this AGREEMENT may be made, each for a five-year period, with each renewal being completed and approved at least thirty (30) calendar days prior to the expiration of the preceding five-year period. Any amendment to this AGREEMENT may be adopted by an instrument in writing signed by all Parties to this AGREEMENT subject to approval by the appropriate authorities. The NATION or AZ DPS may terminate this agreement upon written notice of at least thirty (30) calendar days prior to the termination date, by certified, return receipt, postal mail. Such written notice shall be forwarded to the Director of DPS for the State of Arizona and to the Chief of Police for the NATION. All parties are hereby on notice that this contract is subject to cancellation for Conflicts of Interest pursuant to A.R.S. § 38-511.

Section XIX Provisions Required in Contracts with Agencies of the State of Arizona

Notwithstanding any provision of the AGREEMENT to the contrary, the NATION agrees to abide by the following terms and provisions that are required for contracts with AZ DPS, a constituent department of the State of Arizona:

- A. The NATION shall retain all data and other records relating to the performance of the AGREEMENT for a period of five years after the completion of the AGREEMENT. All records shall be subject to inspection and audit by the AZ DPS at reasonable times. Upon request, the NATION shall produce a legible copy of any or all such records.
- B. The Parties agree to comply with all applicable state and federal statutes and regulations concerning anti-discrimination practices. This contract is governed by Arizona Executive Order 2009-09.

Section XX Sovereign Immunity

Nothing in this AGREEMENT, or in any future amendments, shall be interpreted, either expressly or impliedly, as constituting a waiver of the sovereign immunity of the Navajo Nation or of the State of Arizona.

Section XXI Notices

All notices and communications required or permitted under this AGREEMENT shall be in writing and shall either be delivered in person or sent by certified mail, return receipt requested, to the intended recipient at the addresses set forth below (or such other address as a Party may hereafter specify in writing):

NATION: Chief of Police
Navajo Police Department
P.O. Box 3360
Window Rock, AZ 86515-3360

AZ DPS: Director
Arizona Department of Public Safety
P.O. Box 6638
Phoenix, AZ 85005-6638

Section XXII Savings Clause

If any provision of this AGREEMENT is held invalid or unenforceable by any court of competent jurisdiction, the remainder shall remain in effect unless terminated as provided herein.

Section XXIII Entire Agreement

This AGREEMENT, including any exhibits or other attachments, constitutes the entire terms, conditions and understandings of the Parties hereto. There are no representations or provisions other than those contained herein.

Section XXIV Effective Date of Agreement

This AGREEMENT shall become effective on the date the last signature of the appropriate authorities is affixed below. This AGREEMENT may be executed up to four counterparts; each to be treated as the original.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: May 11, 2015

NO. 34,447

JOSE LUIS LOYA,

Plaintiff,

v.

GLEN GUTIERREZ, Commissioned

Officer of Santa Fe County,

Defendant/Third-Party Plaintiff/Appellant-Petitioner,

v.

COUNTY OF SANTA FE,

Third-Party Defendant/Appellee-Respondent.

ORIGINAL PROCEEDING ON CERTIORARI

Barbara J. Vigil, District Judge

VanAmberg, Rogers, Yepa, Abeita & Gomez, LLP

Carl Bryant Rogers

Santa Fe, NM

Ray A. Padilla, P.C.

Ray A. Padilla

1 **OPINION**

2 **BOSSON, Justice.**

3 {1} Given New Mexico's highways that traverse both state and tribal lands, it is not
4 uncommon that a tribal police officer patrolling those highways may be
5 commissioned as a deputy county sheriff to arrest non-Indians and prosecute them in
6 state court when they commit state traffic offenses on tribal land. In light of those
7 recurring facts, we determine a county's legal obligation when a non-Indian, arrested
8 by a tribal officer and prosecuted in state court for state traffic offenses, sues the
9 arresting tribal officer for federal civil rights violations. More particularly, we decide
10 when the county has an obligation under the New Mexico Tort Claims Act, NMSA
11 1978, §§ 41-4-1 to -29 (1976, as amended through 2009) (NMTCA), to provide that
12 tribal police officer with a legal defense in the federal civil rights action. The district
13 court as well as our Court of Appeals found no such legal duty, in part because it
14 concluded that the tribal officer was not a state public employee as defined in the
15 NMTCA. We hold to the contrary, finding clear evidence in the text and purpose of
16 the NMTCA requiring the county to defend the tribal officer, duly commissioned to
17 act as a deputy county sheriff, under these circumstances endemic to the New Mexico
18 experience.

19 **BACKGROUND**

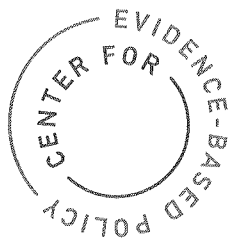


JOINT JURISDICTION COURTS

*A Manual for Developing Tribal, Local,
State & Federal Justice Collaborations*

Jennifer Fahey, JD, MPA
Hon. Korey Wahwassuck
Allison Leof, PhD
Hon. John Smith

Project T.E.A.M
May 2016



ACKNOWLEDGMENTS

This report was written and prepared by:

Jennifer A. Fahey, JD, MPA

Honorable Korey Wahwassuck

Allison Leof, PhD

Honorable John P. Smith

Suggested citation:

Fahey, J., Wahwassuck, K., Leof, A., & Smith, J. (2016). Joint Jurisdiction Courts: A Manual for Developing Tribal, Local, State & Federal Justice Collaborations. Portland, OR: Project T.E.A.M., Center for Evidence-based Policy, Oregon Health & Science University

This publication is a product of Project T.E.A.M., a group of professionals dedicated to helping tribes and local governments create, implement, and manage joint jurisdiction collaborations. Our goals are to improve justice outcomes in the community, to use resources more efficiently and effectively through collaboration and partnerships, and to help repair traditionally difficult relationships between tribes and U.S. governmental bodies.

This project was supported by Grant No. 2012-IC-BX-K003 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Project T.E.A.M. is part of Oregon Health & Science University's Center for Evidence Based Policy, which works with a wide range of stakeholders to improve public policy through innovation, collaboration, and use of best evidence.

This document was prepared by the Center for Evidence-based Policy at Oregon Health & Science University (Center). The document is intended as a reference and is provided with the understanding that the Center is not engaged in rendering any clinical, legal, business, or other professional advice. The statements in this document do not represent official policy positions of the Center. Researchers and authors involved in preparing this document have no affiliations or financial involvement that conflict with material presented in this document.

The Center for Evidence-based Policy
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www.ohsu.edu/policycenter

PREFACE

This manual is a roadmap for tribal and community leaders who want to develop joint jurisdiction courts or initiatives in their own communities. It is not intended to be a curriculum, but rather a guide, articulating the process developed in one Minnesota community and adopted by other jurisdictions, as well as providing information on creating new joint jurisdiction initiatives.

The initial part of this document identifies the benefits of intergovernmental collaboration and describes the creation of the first tribal/state joint jurisdiction court in the Nation, how it was envisioned, developed, and implemented with statistics to demonstrate its effectiveness.

Next, this document provides suggested guidelines for developing a new joint jurisdiction justice collaborative in one's own community based on identified needs, tribal and community culture, evidence-based treatment principals, articulated goals, and defined outcomes.

The third section describes two Project T.E.A.M. collaborations: a joint jurisdiction juvenile court initiative involving the Shingle Springs Band of Miwok Indians, the El Dorado County Superior Court, and county officials in California; and a joint jurisdiction adult wellness court involving the Kenaitze Indian Tribe and the city of Kenai, Alaska.

The final part of the document contains tips for the successful creation of joint jurisdiction courts and describes lessons learned during Project T.E.A.M.'s work.



Introduction

All governments struggle with the challenges of drug and alcohol abuse, gang activity, violence, truancy, unsupervised juveniles, and dysfunctional families. Both tribal and non-tribal systems have the common goals of improved outcomes for families, fewer children in out-of-home-placement, decreased incarceration, decreased recidivism, and decreased disproportionate minority contact in the courts. Unfortunately, neither system has been completely successful in reaching these goals on its own. State courts have historically placed the focus on the symptoms of drug and alcohol abuse and are generally not equipped to deal with the root causes of these problems. Tribal courts place more focus on the root causes but may not have the resources to effectively treat them. Potentially overlapping and conflicting jurisdictional claims also complicate efforts to address these issues.

States and tribes have a range of common interests, and both are expected to protect the health, safety and welfare of their citizens. Common interests include a shared responsibility to use public resources effectively and efficiently, and to provide comprehensive services such as education, health care, and law enforcement to their respective citizens.¹ The jurisdiction of tribal courts to adjudicate matters arising in Indian country encompasses all civil and criminal matters absent limitations imposed by federal authority. Tribes have broad freedoms not enjoyed by any other governmental authority in this country. By keeping common objectives in mind, tribes and states may realize that they have more in common than in conflict and that coordination and cooperation is beneficial to all.²

Each jurisdiction, tribal and state, has tools unique to its system, and joint exercise of jurisdiction allows the systems to leverage scarce resources and achieve better results. Tribal-state cooperative agreements offer both sets of governments the opportunity to coordinate the exercise of authority, share resources, reduce administrative costs, deliver services in more efficient and culturally appropriate ways, address future contingencies, and save costs of litigation.³ These agreements also enable governments to craft legal arrangements reflecting the particular circumstances of individual Indian nations, rather than relying on uniform national rules.⁴

Greater intergovernmental cooperation often results in better services for Indian country, is more cost effective, culturally compatible, and provides better arrest and prosecution rates.⁵ Even the most basic forms of interjurisdictional cooperation can save money and lives. Without question, cooperation works.⁶ In fact, where intergovernmental cooperation has become the rule, not the exception, arrests get made, interdiction of crime occurs, and confidence in public safety improves.⁷

By working together, services to families can be strengthened and overall community wellness can be improved. But such collaboration can only work when those who have the ability to create change “reach out to each other for the good of all.”⁸ The information that follows was designed for those jurisdictions interested in collaborating for better outcomes, building relationships for greater understanding, sharing resources to achieve health and wellbeing, improving public safety, celebrating culture, embracing diversity, and working together to build a better future for whole communities.

¹ www.ncai.org/policy-issues/tribal-governance/state-tribal-relations

² Wahwassuck, Korey; Smith, John P.; and Hawkinson, John R. (2010) “Building a Legacy of Hope: Perspectives on Joint Tribal-state Jurisdiction,” William Mitchell Law Review: Vol. 36: Iss. 2, Article 3. Available at: <http://open.wmitchell.edu/wmlr/vol36/iss2/3>

³ *Id.* at 885-886.

⁴ *Id.* at 886.

⁵ The Tribal Law and Order Act of 2010, Ch. 4, Intergovernmental Cooperation: Establishing Working Relationships That Transcend Jurisdictional Lines, p. 105.

⁶ *Id.* at 113.

⁷ *Id.* at 100.

⁸ Walking on Common Ground: Tribal-State-Federal Justice Systems Relationships. p. 15.